

**United States District Court  
Northern District of Texas  
Dallas Division**

CITY OF DALLAS,

*Plaintiff*

v.

CASE No. 3:23-cv-02367-K

TRIPLE D GEAR, LLC,

*Defendant*

**Defendant's Rule 12(b)(6) Motion for Partial Dismissal and Brief in Support**

Defendant Triple D Gear, LLC files this Motion seeking dismissal of Plaintiff City of Dallas's third claim for relief<sup>1</sup> under Rule 12(b)(6). To survive a motion to dismiss under Rule 12(b)(6), a plaintiff must plead "enough facts to state a claim to relief that is plausible on its face."<sup>2</sup> "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged."<sup>3</sup> "Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice."<sup>4</sup> Rule 8 requires more than "labels and conclusions."<sup>5</sup>

The City's Complaint requests cancellation of two Triple D trademark registrations the City alleges Triple D fraudulently obtained.<sup>6</sup> A claim of fraud against the Patent and Trademark Office ("PTO") in connection with a trademark registration requires proof of: (1) a false representation of a material fact; (2) knowledge or belief that the representation was false; (3) an intent to

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<sup>1</sup> The City does not denominate its claims by number, like Count 1, but the claim Triple D seeks to dismiss is the City's third "claim for relief."

<sup>2</sup> *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007).

<sup>3</sup> *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

<sup>4</sup> *Id.* at 678 (citation omitted).

<sup>5</sup> *Id.*

<sup>6</sup> Dkt. #1 at 23, at ¶¶ 90-93. The City's fraud claim seeks cancellation of U.S. Trademark Registration Nos. 4,586,688 and 6,330,048.

induce the PTO to act in reliance on the misrepresentation; (4) reasonable reliance by the PTO on the misrepresentation; and (5) damage from such reliance.<sup>7</sup> To succeed on a claim of fraudulent registration, the challenging party thus must prove by clear and convincing evidence that the applicant made false statements with the intent to deceive the PTO.<sup>8</sup> “[A]bsent the requisite intent to mislead the PTO, even a material misrepresentation would not qualify as fraud under the Lanham Act warranting cancellation.”<sup>9</sup>

The City’s Complaint does not include even a conclusory recitation of the intent to deceive element. For this reason alone, the Complaint fails to state a claim for fraud and the City’s third claim for relief should be dismissed.<sup>10</sup>

## CONCLUSION

For the forgoing reasons, Triple D respectfully requests that the Court grant its Motion and dismiss the City’s third claim for relief under Rule 12(b)(6).

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<sup>7</sup> *Texas Pig Stands, Inc. v. Hard Rock Café Int’l, Inc.*, 951 F.2d 684, 693 n.14 (5th Cir. 1992); *see also Texas Int’l Prop. Assocs. v. Hoerbiger Holding AG*, 624 F. Supp. 2d 582, 592 (N.D. Tex. 2009) (Kinkeade, J.).

<sup>8</sup> *Hoerbiger Holding*, 624 F. Supp. 2d at 592 (citing *Meineke Disc. Muffler v. Jaynes*, 999 F.2d 120, 126 (5th Cir. 1993)); *see also Good Gov’t v. Coal. for Better Gov’t*, 901 F.3d 498, 507 (5th Cir. 2018); *Dennis Pierce, Inc. v. Pierce*, 735 F. App’x 144, 145 (5th Cir. 2018).

<sup>9</sup> *In re Bose Corp.*, 580 F.3d 1240, 1243 (Fed. Cir. 2009).

<sup>10</sup> *Glob. Healing Ctr., LP v. Powell*, No. 4:10-CV-4790, 2012 WL 1709144, at \*6 (S.D. Tex. May 15, 2012) (Ellison, J.) (dismissing fraud on PTO counterclaim for failure to allege intent to mislead); *see also Yeti Coolers, LLC v. Bapex Int’l, LLC*, No. 1:19-CV-783-RP, 2020 WL 2114385, at \*2-3 (W.D. Tex. May 4, 2020) (Hightower, M.J.) (granting Rule 12(f) motion to strike fraud on PTO inequitable conduct defense for failure to allege element of intent).

December 29, 2023

Respectfully submitted,

**GRIFFITH BARBEE PLLC**

/s/ Casey Griffith

Casey Griffith  
Texas Bar No. 24036687  
Casey.Griffith@g Griffithbarbee.com

Michael Barbee  
Texas Bar No. 24082656  
Michael.Barbee@g Griffithbarbee.com

Ashley Norton  
Texas Bar No. 24105886  
Ashley.Norton@g Griffithbarbee.com

One Arts Plaza  
1722 Routh St., Ste. 910  
Dallas, Texas 75201  
(214) 446-6020 | main  
(214) 446-6021 | fax

**Counsel for Defendant**

**CERTIFICATE OF SERVICE**

The undersigned certifies this document was filed electronically in compliance with Local Rule 5.1. As such, it was served on all counsel of record on December 29, 2023.

/s/ Casey Griffith

Casey Griffith